

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.
SECURITIES & ERISA LITIGATION

No. 2:08-md-1919 MJP

JOINT STATUS REPORT
(DLC-9/PLC-8)

IN RE WASHINGTON MUTUAL, INC.
SECURITIES LITIGATION

Lead Case No. C08-0387 MJP

This Document Relates to: ALL CASES

IN RE WASHINGTON MUTUAL, INC.
CALIFORNIA SECURITIES LITIGATION

Lead Case No. C09-664 MJP

This Document Relates to: ALL CASES

Flaherty v. Killinger

No. C09-1756-MJP

Sweet v. Killinger

No. C09- 1718

IN RE WASHINGTON MUTUAL, INC.
ERISA LITIGATION

Lead Case No. C07-1874 MJP

This Document Relates to: ALL CASES

JOINT STATUS REPORT AND PROPOSALS
CONCERNING PRETRIAL SCHEDULE AND
COORDINATED DISCOVERY PROTOCOL
File No. 2:08-md-1919 MJP

Pursuant to the Court's July 25, 2008 Order [C08-1919 Dkt. No.57 at 4], the parties jointly submit this status report in advance of the telephonic hearing scheduled for Friday January 15, 2010.

A. Scheduling for Securities Actions Alleging State Law Claims

Three securities actions (*Solton*, *City of Buenaventura* and *Flaherty*) include California state law claims, and one securities action (*Sweet*) includes Oregon state law claims.

1. After denying plaintiffs' motion to remand [C08-1919 Dkt. 384], the Court recently consolidated *Solton*, Case No. C09-664 and *City of Buenaventura*, Case No. C09-816 under the caption *In re Washington Mutual, Inc. California Securities Litigation*, Lead Case No. C09-664 [C08-1919 Dkt. 408]. On January 4, 2010, plaintiffs filed an amended complaint [C09-664 Dkt. 26]. The parties in these actions have completed initial disclosures.

2. Pursuant to a pending stipulated order [C08-1919 Dkt. 418], the parties have agreed that the plaintiffs in *Flaherty* will file an amended complaint on January 25, 2010. The *Flaherty* plaintiffs have consented to this Court's jurisdiction and are not seeking remand of the action. *Id.*

3. The *Sweet* plaintiffs have filed a motion asking the Court to remand the case to the Oregon state court [C09-1718 Dkt. 29]. Defendants have filed their opposition to that motion [C08-1919 Dkt. 213] and plaintiffs have filed a reply [C08-1919 Dkt. 419].

4. By stipulated orders, the parties have established the following briefing schedules for these actions:

Case	Answer / MTD	MTD Response	MTD Reply
<i>California Sec. Litig.</i>	February 16	March 15	March 29
<i>Flaherty</i>	March 5	April 7	April 30
<i>Sweet</i>	45 days from remand order	Pursuant to Rule	Pursuant to Rule

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2 5. In the event the Court denies the motions to dismiss in these cases, the parties
3 expect that pretrial proceedings, including discovery, would proceed in conjunction with
4 discovery in the MDL Securities Litigation.

5 **B. Update on JP Morgan Chase Discovery**

6 Since the last status conference, the Plaintiffs in the Securities Action (the “Lead
7 Plaintiffs”) and the ERISA Plaintiffs (collectively, the “MDL Plaintiffs”) and JP Morgan Chase
8 Bank N.A. (“JPMC”) have engaged in numerous meet and confers in an attempt to resolve the
9 issues discussed at the last status conference. While certain issues have been resolved during
10 these discussions, several remain in dispute. Accordingly, the MDL Plaintiffs and JPMC are
11 continuing their meet and confers in an effort to reach resolution regarding among other things,
12 the production of (1) Windows-based ESI (“WESI”) for specified relevant WaMu document
13 custodians whose documents are either not included or incomplete in JPMC’s production of
14 documents to government entities; (2) relevant non-WESI data (which was not included in any
15 production to a government regulator), including a description of the non-WESI databases so that
16 MDL Plaintiffs can make targeted production requests; and (3) a privilege log or equivalent
17 mechanism for JPMC to provide the MDL Plaintiffs with information necessary to evaluate, and
18 if necessary challenge, JPMC’s assertions of privilege as a basis to withhold otherwise
19 responsive documents.

20 The MDL Plaintiffs expect that relevant documents, in addition to the materials obtained
21 by government entities discussed below, will be produced as the MDL Plaintiffs and JPMC
22 address further discovery issues, including JPMC’s responses and objections to Lead Plaintiff’s
23 document subpoena, which are due on January 18, 2010. To the extent that MDL Plaintiffs and
24 JPMC are not able to resolve the outstanding discovery issues, these issues will be raised with
25 the Court in the parties’ supplemental Rule 26(f) status report due to the Court on February 8,
26 2010 (the “February 8 Status Report”).

Pursuant to the Court's November 25, 2009 Order, on January 8, 2010, JPMC produced hard drives containing more than 5 million pages of documents that it had previously produced to the Permanent Subcommittee on Investigations, which included materials produced to the United States Attorney's office. JPMC also produced documents that had been produced to the Department of Labor, and the Securities and Exchange Commission. The documents variously produced by JPMC do not include materials that are the subject of an objection by the Office of Thrift Supervision and the Office of the Comptroller of the Currency.

C. Update on Other Discovery

Lead Plaintiff has served document requests on all Securities Action Defendants and has received responses to most of those requests. Defendants' remaining responses are due by no later than January 22, 2010. The parties have begun the process of meeting and conferring to resolve any issues raised by Defendants' responses in an effort to resolve all open issues through that process. To the extent any issues remain in dispute, the parties will raise them in the February 8 Status Report.

The ERISA Plaintiffs recently served document requests, requests for admission, and interrogatories, responses to which are due on January 18, 2010, and are following up with Defendants on previously served document requests.

D. Government Agency Objections

At the November 20, 2009 status conference and by Order dated November 25, 2009, the Court ordered: (i) JP Morgan Chase to produce all documents that they had produced to the governmental agencies investigating Washington Mutual, Inc. by no later than January 8, 2010; and (ii) the parties to issue a joint notice to all relevant agencies notifying them of the production and allowing them until January 6, 2010 to file a motion for a protective order (the "Notice"). [C08-1919 Dkt. 392 at 3]. On December 4, 2009, Lead Plaintiff served the Notice on the eight governmental agencies. [C08-1919 Dkt. 400].

Pursuant to this process, on January 6, 2010, Lead Plaintiff and the U.S. Attorney's Office filed a joint notice advising the Court of the results of discussions as to the scope of production and stating that the Court does not need to take any further action at this time [C08-1919 Dkt. 415].

On this same date, the Office of Thrift Supervision and the Office of the Comptroller of the Currency ("OTS/OCC") sent a joint letter to the Court objecting to the production of documents based on the assertion of a bank examiner's privilege [C08-1919 Dkt 392]. Pursuant to the Court's Minute Order [C08-1919 Dkt. 416], Lead Plaintiff is submitting a response to the objections of the OTS/OCC. The ERISA Plaintiffs join in Lead Plaintiff's Response. Defendants have not taken any position with respect to the OTS/OCC objection.

E. Claw-Back Agreement and Privilege Claims

At the October 6, 2009 hearing, the Court directed the parties to establish procedures for claims of privilege including the clawback of inadvertently-produced documents. On November 11, 2009, the parties submitted a joint status report that identified agreed and disputed issues relating to inadvertently-produced documents and claims of privilege [C08-1919 Dkt. 389]. The Court conducted a telephonic hearing on November 20, 2009, and issued an Order on November 25, 2009, addressing the disputed issues [C08-1919 Dkt. 392]. With the guidance of the Court's Order and after further discussion, the parties and non-parties JPMC and Washington Mutual, Inc. are preparing a stipulated order that will establish single procedure for inadvertently-produced documents and that will adopt the deposition procedures for inadvertently-produced documents established by the Court's Order. Separately, the parties are preparing a second stipulation that incorporates the provisions of the November 11, 2009, joint status report regarding privilege logs.

Dated: January 13, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2010, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who receive CM/ECF notification, and that the remaining parties shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 13th day of January, 2010.

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